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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF DR. VEENA J. ALFRED : Case No. S-2815
and ALFRED HOUSE ELDERCARE, INC. : OZAH No. 12-03
:
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A hearing in the above-entitled matter was held on
January 27, 2012, commencing at 9:41 a.m., at the Council
Office Building, 100 Maryland Avenue, Rockville, Maryland
20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

Anne Marie Vassallo, Esq.

David D. Freishtat, Esq.

Shulman Rogers

12505 Park Potomac Avenue, 6th Floor

Potomac, Maryland 20854

Witnesses:

Direct

Dr. Veena J. Alfred, Ph.D.

5

Vic Bryant

13, 34

Patrick G. La Vay

17

William H. Stablein

65

Carl F. Starkey

75

E X H I B I T S

<u>Exhibit No.</u>		<u>Marked/Received</u>	
29	Affidavit of Posting	4	
30	Resume of Vic Bryant	13	
31	Rendered Site Plan	15	15
32	Aerial Photograph	15	15
33	Resume of Patrick La Vay	17	
34	Revised Site Plan	21	22
35	Revised Landscape Plan	57	57
36	Resume of William Stablein	64	
37	Resume of Carl Starkey	75	75
38	SHA 2011 Turning Movement Count	79	

1 So as you know, I won't go through the nature of
2 the special exception because I'm sure you're familiar with
3 it. Have you, do you have an affidavit of posting with you?

4 MS. VASSALLO: We do.

5 MS. ROBESON: Okay. I'm going to mark that as
6 Exhibit number 29. Thank you, Mr. Freishtat. Okay. Do you
7 have any opening statement you'd like to make, or do you
8 want to go directly into your case?

9 (Exhibit No. 29 was
10 marked for identification.)

11 MS. VASSALLO: We don't have any specific opening
12 statement. I was just going to begin with introductions,
13 and then we will begin from there.

14 MS. ROBESON: Okay. That's fine.

15 MS. VASSALLO: I've noted, I'm Anne Marie
16 Vassallo, on behalf of Dr. Veena Alfred, who is here, of
17 course. She will be testifying today in support of her
18 application for a 34-bed domiciliary care home at the
19 address previously specified.

20 We also have with us Patrick La Vay, who will be
21 testifying on matters of engineering. We have with us Vic
22 Bryant, who will be testifying on land planning. We have
23 William Stablein, who will be speaking to architecture. And
24 we have Carl Starkey, who will speak to you on traffic and
25 transportation.

1 MS. ROBESON: All right. Why don't you call your
2 first witness?

3 MS. VASSALLO: Okay. I'd like to call Dr. Veena
4 Alfred who is our, who is the property owner, the applicant,
5 and she will be the operator.

6 MS. ROBESON: And actually, what I may do is,
7 since there is no opposition today, if I could have everyone
8 who's going to testify, raise their right hands, and I'll
9 swear everybody in at one time, and then we don't have to go
10 through that piece by piece. So that would be, I have the
11 people that were previously identified by you, please raise
12 your right hand.

13 (Witnesses sworn.)

14 MS. ROBESON: Thank you. Proceed.

15 MS. VASSALLO: Okay. I'm going to begin with our
16 first witness.

17 DIRECT EXAMINATION

18 BY MS. VASSALLO:

19 Q Would you please state your name, your work
20 address, and your occupation?

21 A My name is Veena Alfred. Work address is 18100
22 Cashell Road, Rockville, Maryland 20853.

23 Q And please tell us what you do?

24 A I am the administrator for Alfred House
25 facilities. Currently we have eight facilities throughout

1 Montgomery County.

2 Q What is the purpose of your testifying today, at
3 today's hearing?

4 A To say that we would like to have a special
5 exception for this vacant site, piece of land, where we
6 could be able to meet additional needs of elderly residents,
7 because it's a known fact that the population is increasing
8 of the senior community. And it will help the low income
9 group.

10 Q Would you explain a bit about your care homes and
11 what Alfred House does?

12 A Alfred House provides that support which is not
13 available at nursing homes, and people can't have it in
14 their own homes. Somebody to help them take a shower,
15 somebody to cook for them, someone to make sure that they
16 have taken their medications on time.

17 Q Would you just tell us briefly about the general
18 characteristics of the population you serve, and whether
19 your facility provides Alzheimer's type care?

20 A We do not provide specific Alzheimer's care. But
21 we do care for frail and elderly residents. We call them
22 residents because they are not patients. And they need
23 daily support system. That's what Alfred House provides,
24 makes sure they get up in the morning, they are taking their
25 shower, somebody to help them, give them their breakfast,

1 help them later on to steer them through their day, call
2 their doctors as and when needed, make sure they get their
3 meals on time, their snacks on time, et cetera. And then,
4 of course, help them to get to bed.

5 Q Do you provide additional services such as laundry
6 or if they need a haircut, those sorts of things?

7 A Yes, we do provide laundry service, housekeeping,
8 and for haircuts, et cetera, if they prefer, they can have a
9 barber come in, a hairdresser come in, or we can take them
10 for a field trip or for a shopping trip and they can have a
11 haircut.

12 Q Okay. Now, the application indicates that on this
13 property there exists what is classified as a small group
14 home. How many residents live there, and then how many
15 could live there?

16 A It is licensed for five residents, and there are
17 five residents now.

18 Q Please tell us about the staff in the existing
19 group home?

20 A We have two staff members who don't live there,
21 but they work through their shifts.

22 Q And assuming a special exception for 34 beds, for
23 which we are here today, is approved, will that small group
24 home continue to operate at the property?

25 A Yes, it will.

1 Q The special exception is sought for 34 beds, as we
2 know. Will that be licensed?

3 A Yes.

4 Q How will it be licensed?

5 A It will be licensed by Office of Health Care
6 Quality, which comes under Department of Health and Mental
7 Hygiene.

8 Q Okay. The application is for a 34-bed domiciliary
9 care home. Do you have any plans to expand that facility?

10 A No.

11 Q What is your proposed staffing for the 34 bed
12 domiciliary care home?

13 A Approximately 10 employees through various shifts.

14 Q Will those staff be residents at the facility?

15 A No.

16 Q Can you give us an idea of the typical staff
17 schedule?

18 A It is one to four. One caregiver to four
19 residents. And at night there will be two employees.
20 Daytime, there will be more.

21 Q What are the usual shifts, keeping in mind that
22 sometimes there could be overlap if there is a weather
23 emergency or other sort of unforeseen emergency
24 circumstances?

25 A Our shifts are from 7:30 to 7:30.

1 Q Okay. Do your residents typically have vehicles?

2 A No.

3 Q Is that the case when they arrive to be residents?

4 A That is the case when they arrive to be residents.

5 Q Is there any sort of, please give us an idea of
6 the physical activity of the residents on the property?

7 A They like to stay in-house. They like to stay
8 warm. Even in summer, the temperatures, they find them
9 quite cold, so we have to encourage them even to go out for
10 field trips. And they have in-house activities like music,
11 art, therapy, and movies, things to do inside, exercises.
12 But most of the time they like to stay in-house, unless they
13 have a family member who will come and take them for the
14 weekend.

15 Q Have you received any comments from neighbors or
16 community members?

17 A None whatsoever.

18 Q And we've noted in the application that the Casey
19 House at Montgomery Hospice is located diagonally across the
20 street. Have you worked with Montgomery Hospice in the
21 past?

22 A Very well, because we do provide end of life care
23 at our facilities, and they have placed their residents --
24 in fact, when our residents come to a stage when we know
25 that we are looking at maybe another eight weeks or nine

1 weeks, we do invite Montgomery Hospice to come in. And they
2 come and provide the supervision, and through their
3 protocol, we provide the care.

4 Q Would you just briefly explain how the care you
5 provide is slightly different from a nursing home?

6 A Nursing home, as the name reflects, requires
7 nursing care our patients do not require. That is one of
8 the requirements. They do not require ongoing nursing care.

9 Q And are you proposing a sign to mark the location
10 of your facility?

11 A Yes, we are.

12 Q And where do you intend to place that sign?

13 A At the corner of Muncaster Mill Road and Needwood
14 Road.

15 Q And are you aware that the sign, as proposed, as
16 submitted with the application, exceeds, by right, the
17 dimensions in the ordinance. And if approved, you would
18 need to pursue a sign variance in order to put in place the
19 sign you seek?

20 A Yes. I am aware of that.

21 MS. VASSALLO: Okay. I don't have any additional
22 questions for Dr. Alfred.

23 MS. ROBESON: I just have a couple. Have you, are
24 you familiar with the Planning Board recommendation and the
25 technical staff report from Park and Planning in the case?

1 THE WITNESS: Yes, I am.

2 MS. ROBESON: And the Planning Board lists several
3 recommended conditions of approval. Do you agree to
4 implement those conditions of approval?

5 THE WITNESS: Yes, I do.

6 MS. ROBESON: Okay. And the Planning Board, and
7 maybe you're not the person to ask, but the Planning Board
8 recommended that I explore a condition that would reduce any
9 noise-related impacts from the generator on this site. Are
10 you prepared to -- I'd kind of like to hear if you have a
11 proposed condition. But if you're not the witness to ask
12 about that, I'll wait.

13 THE WITNESS: I believe Macris Hendricks have
14 already taken care of it. It is already there on the
15 drawings.

16 MS. ROBESON: Okay. Go ahead.

17 MS. VASSALLO: Our engineer will speak to that.

18 MS. ROBESON: Will speak to that. Okay. And I
19 had one question. Can you explain your position on the -- I
20 just want to hear from you what you intend on the shared, on
21 the bike path on the property. What is your position on --
22 one of the things that I have to find is that it complies
23 with the master plan.

24 And you probably have your land planner, but what
25 is your position, if you have to provide the bike path, are

1 you going to do so?

2 THE WITNESS: If we have to, we will comply.

3 MS. ROBESON: Okay. All right.

4 MS. VASSALLO: Our land planner will also speak to
5 that.

6 MS. ROBESON: Okay. I just wanted to check with
7 her, because I have to make a finding that she's going to
8 comply with the master plan, even though, you know, perhaps
9 awaiting additional developments. So, all right. I have no
10 further questions. Do you have any questions based on my
11 questions?

12 MS. VASSALLO: I think we will be addressing them
13 through other witnesses as well.

14 MS. ROBESON: Okay. Fine. Thank you, Dr. Alfred.

15 MS. VASSALLO: The next individual who I would
16 like to have speak is Vic Bryant. Madam Hearing Examiner,
17 Vic Bryant has testified before this body very recently,
18 although I don't know that she's testified before you.

19 She has testified as an expert in land planning
20 and land architecture. So I will defer to you as to whether
21 you'd like me to question her to establish her credentials
22 to testify as an expert witness, or whether you'd like to --

23 MS. ROBESON: Is her resume in the file?

24 MS. VASSALLO: It is not, but I have it for you.

25 MS. ROBESON: Why don't we admit that. That will

1 be Exhibit 30. And she has qualified as an expert before us
2 before?

3 (Exhibit No. 30 was
4 marked for identification.)

5 MS. VASSALLO: Yes.

6 MS. BRYANT: The last page of my resume lists the
7 four different special exceptions that I've -- well, three
8 special exceptions and a rezoning.

9 MS. ROBESON: Okay. And you're being qualified as
10 in what, landscape architecture and land use planning?

11 MS. BRYANT: Yes.

12 MS. ROBESON: Okay. I don't have -- I'll accept
13 you as an expert in those fields. And please make sure you
14 state your address for the record as well.

15 DIRECT EXAMINATION

16 BY MS. VASSALLO:

17 Q Would you please state your name, occupation, and
18 work address?

19 A My name is Victoria Bryant. I'm a registered
20 landscape architect. I am vice president of land planning
21 and landscape architecture for the firm of Macris, Hendricks
22 and Glascock, which is at 9220 Wightman Road, Suite 120,
23 Montgomery Village, Maryland 20886.

24 Q Thank you. And are you familiar with the Alfred
25 House domiciliary care special exception application which

1 is S-2815?

2 A Yes, I am.

3 Q Are you familiar with the special exception
4 property, the surrounding area, and the application itself?

5 A Yes, I am.

6 Q Okay. Would you please briefly explain how you
7 went about familiarizing yourself with the property and the
8 application before us today.

9 A And around early 2008 Dr. Alfred approached us
10 wishing to better understand her options for developing the
11 site. At the time, the small group home existed. So we did
12 a feasibility study for Dr. Alfred looking, you know,
13 looking at the potential for doing a domiciliary care. I
14 agree with you, it's hard to say.

15 MS. ROBESON: Thank you.

16 THE WITNESS: It's also hard to spell.

17 MS. ROBESON: I don't know if it was too early in
18 the morning or -- okay, go ahead.

19 THE WITNESS: And our initial investigation showed
20 that it was a use, but I was a special exception use, so she
21 didn't have to go through the special exception process. In
22 addition to that, she needed to get a sewer category change,
23 because it was S-6 at the time.

24 They went through the, so we took her through the
25 sewer category change. That was approved in June of 2010.

1 And then we moved forward and been working with her on this
2 application.

3 MS. ROBESON: This is S-1 now?

4 THE WITNESS: It is S-1 now.

5 MS. ROBESON: Okay. Just before you begin, so I
6 don't have to interrupt, are you going to -- is that
7 rendered site plan in the record yet?

8 MS. VASSALLO: It is not yet in the record.

9 MS. ROBESON: Okay. Why don't we mark that, and
10 then if you could make that, if you don't mind. Thank you,
11 Mr. Freishtat, marking that as Exhibit 31. And that will be
12 the rendered site plan. And did I see an aerial photograph
13 on the other side?

14 MS. VASSALLO: Yes, you did. And I don't believe
15 that particular one is in there.

16 MS. ROBESON: So we'll mark that as Exhibit 32,
17 aerial photograph of subject property. Okay. And those
18 will be admitted. All right. I'm sorry to interrupt. Why
19 don't you continue.

20 (Exhibit No. 31-32 were
21 marked for identification and
22 admitted into evidence.)

23 MR. FREISHTAT: Do you prefer the site plan or the
24 aerial?

25 MS. VASSALLO: I'll start with this, I think the

1 aerial first. Yes.

2 MS. ROBESON: So that we're looking at Exhibit 32.

3 MS. VASSALLO: Okay. I'm sorry, I was supposed to
4 call Pat first. Madam Hearing Examiner --

5 MS. ROBESON: But you can domiciliary, so that's
6 okay.

7 MS. VASSALLO: Would you mind if I called our
8 witnesses out of order, and I think it would make more sense
9 from a logical standpoint if our engineer first speaks to
10 this photo? Would you --

11 MS. ROBESON: Whatever makes more logical sense to
12 you, I will defer.

13 MS. VASSALLO: I'm going to ask Ms. Bryant to step
14 down for now, but she will be returning to continue her
15 testimony. I'd like to ask Mr. Patrick La Vay to speak now
16 on matters of civil engineering.

17 MS. ROBESON: And is his resume in the record?

18 MS. VASSALLO: It is not. Mr. La Vay also has
19 testified before this body recently. And so I again will
20 leave it to your discretion whether you would like me to
21 establish his credentials. And I will be handing you his
22 resume in a moment.

23 MS. ROBESON: Let me just ask Mr. La Vay. In what
24 forums have you qualified? I'm going to put your resume in
25 as Exhibit 33. And can you just briefly tell me what forums

1 you've qualified as an expert, and in what areas you've
2 qualified as an expert?

3 (Exhibit No. 33 was
4 marked for identification.)

5 MR. LA VAY: I've previously qualified before
6 Mr. Martin Grossman, Montgomery County Hearing Examiner.
7 Those were both for special exception applications, more
8 specifically, application number S-2819 and S-2820.

9 MS. ROBESON: Okay. Okay. And are you asking to
10 be qualified as an expert in civil engineering?

11 MR. LA VAY: That's correct.

12 MS. ROBESON: And are you licensed in Maryland?

13 MR. LA VAY: Yes, I am.

14 MS. ROBESON: I will accept you as an expert in
15 civil engineering.

16 DIRECT EXAMINATION

17 BY MS. VASSALLO:

18 Q Mr. La Vay, would you please state your name and
19 your occupation and your work address?

20 A My name is Patrick La Vay. I am a project
21 engineer with Macris, Hendricks and Glascock. And our work
22 address is 9220 Wightman Road, Suite 120, in Montgomery
23 Village, Maryland.

24 Q And already admitted have been the rendered site
25 plan and the aerial photo of the subject property. So in

1 your testimony, you may make reference to those items. Are
2 you familiar with the Alfred House domiciliary care home
3 application S-2815?

4 A Yes, I have reviewed the application and the civil
5 engineering drawings.

6 Q And are you familiar with the property surrounding
7 area?

8 A Yes, I have visited the property and the
9 surrounding area for this application.

10 Q Would you explain, just in general terms, some of
11 the engineering aspects of this property, and what you've
12 done in evaluating its engineering?

13 A Sure. Our work would begin with a survey of the
14 existing conditions of the property, and a boundary survey
15 located in the existing property lines. We would then work
16 on placement and grading of the building and parking, layout
17 of the number of spaces of parking, water and sewer design,
18 storm water management, and drainage, and review the
19 development standards for the project.

20 Q So are you familiar with the zoning ordinance
21 requirements in respect to the domiciliary care home special
22 exception?

23 A Yes, I have previously testified as an expert in
24 civil engineering for a domiciliary care facility in
25 Montgomery County, and I have reviewed this particular

1 application for conformance with the Montgomery County
2 zoning ordinance.

3 Q I'd like to turn to the rendered site plan, which
4 is Exhibit 31. Would you just explain generally the
5 proposed layout of the site?

6 A Sure. I might bounce back to the other one, just
7 first, just because I might have skipped over a few things
8 there.

9 MR. FREISHTAT: Put them on both sides of the same
10 exhibit. Come on.

11 BY MS. VASSALLO:

12 Q Okay. Now we're looking at the aerial photo of
13 the subject property, which is Exhibit 32.

14 A Yes, just to familiarize ourselves with where we
15 are.

16 MS. ROBESON: That's great.

17 THE WITNESS: The subject property is located at
18 the southern intersection of Muncaster Mill Road and
19 Needwood Road in Derwood, Maryland. It is zoned RE-1, and
20 is bound to the south and west by residential properties in
21 the same zone.

22 The existing property is just under two and a half
23 acres in size, and is recorded as parcel 927, as we've
24 noted. Existing improvements to this site are limited to a
25 small group home, small driveway area, and some walkways

1 associated with the building.

2 There is currently no area meeting the definition
3 of forest on the site. There are no streams, wetlands,
4 flood plains, or stream valley buffers on the site. It is
5 not located within a Montgomery County special protection
6 area, nor is it located within the Patuxent River primary
7 management area.

8 The site is a tributary to the Upper Rock Creek
9 watershed, and upon inspections from our office, there are
10 no rare, threatened, or endangered species of plants and
11 animals present on the site.

12 Now we can go to the proposed conditions. I just
13 wanted to give a background of the existing layout.

14 BY MS. VASSALLO:

15 Q And now we are looking at the rendered site plan,
16 which is Exhibit 31.

17 A The proposed improvements include a 21,576 square
18 foot two-story residential style structure, with a 17-space
19 parking lot, which will be located between the existing and
20 proposed structures.

21 The access to the site is primarily in its
22 existing location, but it is being upgraded in width to
23 accommodate the additional vehicular traffic and
24 circulation. Are there more questions on that?

25 Q Let's see. And what's the orientation of the

1 building?

2 A The building will front to the north, Needwood
3 Road.

4 Q And is there just one point of access?

5 A Yes.

6 Q Okay. So will all traffic come in through that
7 driveway?

8 A That is correct. All traffic will enter through
9 Needwood Road.

10 Q Okay. Would you tell us the, point out for us the
11 setback areas?

12 A Sure. Can we look to the site plan?

13 MR. FREISHTAT: Yes.

14 BY MS. VASSALLO:

15 Q Yes. And I believe --

16 A Just because I don't have the actual numbers
17 memorized.

18 MS. ROBESON: I don't think you're expected to.
19 But let me, is that already in the record?

20 MS. VASSALLO: This is an updated site plan with
21 more refined measurements. So let's admit it.

22 MS. ROBESON: Okay. Then let's mark that as
23 Exhibit 34. And I'll just call it current site plan.

24 (Exhibit No. 34 was
25 marked for identification.)

1 MS. VASSALLO: Yes.

2 MS. ROBESON: When you say updated, is it revised
3 or just more detail?

4 MS. VASSALLO: It has more detail, and I think new
5 measurements were taken and they are a few feet different.

6 MS. ROBESON: Okay, then I'll say revised site
7 plan.

8 MS. VASSALLO: Okay.

9 MS. ROBESON: That will be 34, and it's admitted.

10 (Exhibit No. 34 was
11 admitted into evidence.)

12 BY MS. VASSALLO:

13 Q Okay. Mr. La Vay, now using revised site plan,
14 which is Exhibit 34, would you please point out the setback
15 areas?

16 A Sure. The setback from Needwood Road is located
17 at the building frontage, and is approximately 52 feet. The
18 setback from Muncaster Mill Road, which is to the east, is
19 141 feet, both of which meet or exceed the required setbacks
20 in the zoning ordinance for this particular zone. The
21 setback to the rear is 40 feet, and the setback to the
22 designated side yard is 153 feet.

23 MS. ROBESON: I just have one question on that. I
24 thought that corner lots don't have a rear yard, that they
25 are two side yards. Am I incorrect on that?

1 THE WITNESS: My interpretation is that, when you
2 have a corner lot, that essentially the rear is chosen
3 behind where the building fronts. The building actually
4 fronts to Needwood Road, so the rear would be considered in
5 the back of the building.

6 MS. ROBESON: I see. And what's the setback
7 between the rear, what you're calling the rear setback?

8 THE WITNESS: 40 feet.

9 MS. ROBESON: 40 feet. Okay.

10 THE WITNESS: Which exceeds the side yard, so --

11 MS. ROBESON: Well, either way. Yes. Okay. I'm
12 sorry. Go ahead.

13 BY MS. VASSALLO:

14 Q What is the proposed building height?

15 A The proposed building height is 26.7 feet, and
16 that's measured from the average grade along the front of
17 the building to the mean roof of the structure.

18 Q And would you just explain the access, the
19 delivery area, and the parking area, how that's laid out?

20 A Sure. Well, the access, again, is primarily in
21 its existing location, which does have adequate site
22 distance in both directions on Needwood Road. It's being
23 widened and turning radius points are being upped in size to
24 accommodate the commercial vehicles and a fire apparatus.

25 Traditional parking will come in. There is a 17-

1 space lot here, three of which are accessible, van
2 accessible spaces for those with disabilities. Deliveries
3 will mostly occur to the side of the building where you see
4 two, I guess it's the west side of the building where there
5 are two accessible spaces and a large striped isle, although
6 there is a small area designated to allow a vehicle to turn
7 around and leave. There won't be really any parking there,
8 but it's just an area for circulation purposes.

9 Q And where are the trash and dumpster areas
10 projected to be?

11 A The enclosures are at the south corner of the
12 parking lot, straight in, when you come in from the access.
13 and that will be, dumpsters will be enclosed by a standard
14 enclosure.

15 Q Okay.

16 A Straight in that.

17 Q Would you point out the area that's intended to,
18 where the generator is intended to be located?

19 A The generator is intended to be, again, in the
20 south corner of the parking lot. It's more of the southwest
21 corner of the parking lot. That generator, we'll call it a
22 generator pad, will be topographically tucked in as it
23 relates to the adjacent properties. There's a, I believe, a
24 10-foot grade change from the adjacent property down to
25 where that will sit.

1 MS. ROBESON: When you say the adjacent property,
2 you're pointing to which property on that?

3 THE WITNESS: I would be pointing to, I guess, two
4 properties, the adjacent properties. And that would be
5 parcel 979 --

6 MS. ROBESON: Okay.

7 THE WITNESS: -- to the west, and parcel 984 to
8 the south.

9 MS. ROBESON: Okay. And I can see the contour
10 lines, but I can't see the grades. That's, it's going down
11 from those, from the adjoining property lines? The grade is
12 sloping down?

13 THE WITNESS: So at the south corner of the
14 applicant's property, the grade is approximately 437. And
15 this gravel pad is, it varies, but it's between 424 and, or
16 424.7 and 423.8.

17 MS. ROBESON: Okay.

18 THE WITNESS: So there is a significant grade
19 change from the adjacent properties, downwards.

20 MS. ROBESON: Okay. Down. Sloping down. Okay.

21 THE WITNESS: So it won't be seen, visually.

22 MS. ROBESON: Okay. And are you the person to
23 talk about the noise?

24 MS. VASSALLO: Mr. La Vay can speak to generator
25 and the noise --

1 MS. ROBESON: Okay.

2 MS. VASSALLO: -- this addressing that condition.

3 MS. ROBESON: Have you done any, you know, as far
4 as the Planning Board's condition, what is it that you're
5 proposing?

6 THE WITNESS: Well, I guess I would say from my
7 experience with domiciliary care facilities, and actually a
8 much larger facility, the generator on that project
9 generated somewhere between 65 and 68 decibels at a distance
10 of less than 25 feet from the adjacent property.

11 MS. ROBESON: Okay.

12 THE WITNESS: And that doesn't account for any
13 kind of screening, enclosures, additional exhaust, muffling
14 measure that can be taken. I would say the applicant will
15 certainly have their unit chosen to meet or exceed the
16 requirements in the zoning code. I believe it's 50, Chapter
17 31B.

18 MS. ROBESON: Yes. Is it 55 decibels?

19 THE WITNESS: It's 55 decibels in the evening.
20 It's 65 during the day. And typically, these things are
21 run, are cycled to run during the day for 15 minutes once a
22 week. And the owner could program that particular cycling
23 time, so they would happen first thing in the morning, or in
24 the afternoon.

25 MS. ROBESON: Okay. I guess what -- okay. Are

1 you saying, but I don't have the unit in front of me. I
2 guess what I need to do is say that the generator is going
3 to be fine.

4 THE WITNESS: What I would say is that the
5 applicant will choose a product and will ensure that the
6 proper measures are taken to comply with the County noise
7 limits of the 65 decibels during the day, and 55 in the
8 evening. And that can be a combination of screening
9 measures, additional silencing mechanisms you can buy for
10 the unit.

11 MS. ROBESON: Well, okay.

12 THE WITNESS: That also doesn't take into account
13 the grade differential that's here as well.

14 MS. ROBESON: Are you testifying that the grade
15 differential is going to buffer the noise?

16 THE WITNESS: I would say, the grade differential
17 and landscaping, landscape screening, as well as an
18 enclosure would do so.

19 MS. ROBESON: Okay. Is the landscape screening on
20 this, that you're proposing, is that on the site plan?

21 THE WITNESS: There is minimal. There is some
22 existing evergreen trees, I believe, here along the west
23 property line. But at this time there is nothing shown on
24 the west side of that area between the generator and the
25 property line, anything in addition to what's already there

1 today.

2 MS. ROBESON: All right.

3 BY MS. VASSALLO:

4 Q Where is the noise measurement taken?

5 A Well, the noise measurement would be taken just at
6 the closest location. So the nearest property would be to
7 the west, and that's, I believe, 39 feet.

8 Q Okay.

9 MS. ROBESON: Okay. I guess what I'm struggling
10 with is, that there is case law saying I just can't assume.
11 I have to be, I have to find that it's going to work the way
12 it's proffered to work. And there is case law saying I
13 can't just rely on a future thing.

14 If there's going to be any landscaping used to
15 buffer the noise, then that should be shown on the site
16 plan. If you're testifying to me that you don't think,
17 you're not proposing landscaping, but it's going to work
18 anyway, you know, I can, if you feel comfortable saying
19 that, you know, I can use that.

20 But if you're saying -- I need to know what you're
21 proposing, and not just leave it open into the future. And
22 I'm not trying to give you a hard time.

23 THE WITNESS: I understand.

24 MS. ROBESON: So my question then is, is it going
25 to meet the noise standards as is, as shown on that site

1 plan?

2 THE WITNESS: In my opinion, yes. Just to give
3 you a more definitive answer, I believe I would need to
4 discuss that with what the applicant wants to commit to at
5 this time, before I can say definitively, X, Y and Z is
6 going to ensure that.

7 MS. VASSALLO: I think the applicant is amenable
8 to a condition that would speak to ensuring that the noise
9 generated by the generator will not exceed that permitted
10 under the Montgomery County noise ordinance.

11 There are a combination of measures that could
12 achieve that, and if you'll just give us a minute, we'll try
13 and work out a definitive explanation, or even listing of
14 the ways we can do that.

15 MS. ROBESON: Okay. But I understand that. What
16 I'm saying is, the site plan has to show what you're going
17 to do.

18 MS. VASSALLO: Okay.

19 MS. ROBESON: The special exception site plan has
20 to show the landscaping and how that is going to be
21 addressed.

22 MS. VASSALLO: Okay.

23 MS. ROBESON: All right. And it's not sufficient,
24 in my opinion, under the case law saying, we'll deal with it
25 later.

1 MS. VASSALLO: Right.

2 MS. ROBESON: Because you would have to come in
3 and amend your site plan. And there is case law saying, you
4 can't just delegate to the future.

5 MS. VASSALLO: Sure. Right.

6 MS. ROBESON: So what I need to know is what your
7 plan is. I need to know what the plan is and whether -- and
8 then I need a witness to say, and that's going to work.

9 MS. VASSALLO: And clearly we haven't selected a
10 generator model just yet.

11 MS. ROBESON: No. And I'm not saying that you
12 need to select a generator model. I'm saying that if you
13 are going to buffer it, if you are going to rely on
14 landscaping or something else, that has to be shown on the
15 site plan. And because a lot of times in special
16 exceptions, we'll actually have, for instance, the light
17 figures in the record.

18 MS. VASSALLO: Right.

19 MS. ROBESON: So that's, so I'm not saying you
20 have to select a generator model. I'm just saying, if you
21 are going to rely on landscaping and other things, that
22 landscaping should be shown on the site plan.

23 MS. VASSALLO: Okay.

24 MS. ROBESON: And then I need you to testify that
25 whatever model, if you want to say, whatever model we

1 choose, that this will be sufficient.

2 THE WITNESS: I believe our architect can probably
3 speak to that more definitively, to the actual measures that
4 can be taken within the unit, as in mufflers and those kinds
5 of things. But I would think I need to just talk to the
6 applicant about what we want to commit to today.

7 MS. ROBESON: And I have no problem with that.
8 What is your preference? We can take a 20-minute recess and
9 let you talk about that while he's the witness, or, you
10 know, we can come back to that later. It's up to you.

11 MR. FREISHTAT: The appropriate witness for this
12 is really the architect.

13 MS. ROBESON: Oh, I'm sorry. Okay. That's fine.

14 MR. FREISHTAT: He's fine, but the architect is
15 the guy who --

16 MS. ROBESON: And that was Mr. Freishtat, for the
17 record. So that's fine. So we'll continue.

18 BY MS. VASSALLO:

19 Q Okay. All right. While we're still on the
20 ground, I'd like to turn to the -- let's see. Has a storm
21 water management concept plan been approved for this
22 property?

23 A Yes. A storm water management concept was
24 approved by the Montgomery County Department of Permitting
25 Services in November of 2011.

1 MS. VASSALLO: Okay. And Madam Hearing Examiner,
2 I believe that a copy of that approval letter is appended to
3 the technical staff report.

4 MS. ROBESON: Yes. It is.

5 BY MS. VASSALLO:

6 Q Okay. Would you just show us on Exhibit 34 the
7 areas where the storm water will be managed?

8 A Sure. There are two micro-bio retention
9 facilities. One is along the south corner of the building,
10 adjacent to parking. And there is a long, narrow facility
11 on the north side of the building. And both of those are
12 designed in accordance with the latest Maryland storm water
13 management regulations.

14 Q Okay. Thank you. And has a preliminary forest
15 conservation plan been approved for this property by the
16 Montgomery County Planning Board?

17 A Yes, a preliminary forest conservation plan was
18 approved by the Planning Board on January 19th of this year,
19 2012.

20 MS. VASSALLO: And I believe that the Planning
21 Board's approval has been transmitted and is in the record.

22 MS. ROBESON: I have --

23 MS. VASSALLO: Exhibit 28, I believe, is the
24 letter from the chair of the Planning Board.

25 MS. ROBESON: Oh, is it? I missed that. Okay. I

1 just saw the recommendation. I didn't see the actual
2 letter.

3 MS. VASSALLO: It's there, I think.

4 MS. ROBESON: Oh, it just came in. Okay. That's
5 fine. I didn't see it. All right. That's good. Thank
6 you.

7 BY MS. VASSALLO:

8 Q Okay. I'd like to briefly look at the parking
9 area. What is the parking requirement for this use?

10 A The parking requirement for the site is 16 spaces.
11 and that takes into account both the existing and proposed
12 use.

13 Q And how many spaces are provided?

14 A There are 17.

15 Q And does that meet the requirement of the zoning
16 ordinance?

17 A Yes, it does.

18 Q Okay. All right. One item I don't know that we
19 addressed, the lot width. Would you point out the lot width
20 at the various points of measurement, including the street
21 line and the building?

22 A Well, along the Needwood Road street line is
23 approximately 435 feet. As you set back into the site along
24 the face of the building it is 455 feet.

25 Q Okay.

1 A Which is much greater than the minimum set forth
2 in the zone.

3 MS. ROBESON: Yes. Okay.

4 MS. VASSALLO: Those are about the only questions
5 I have for Mr. La Vay. If you have any questions at this
6 time, if you have any questions, please go ahead.

7 MS. ROBESON: No. I think I've pestered you with
8 my questions. So no I'm fine. Thank you.

9 MS. VASSALLO: Okay. All right. And if we need
10 any further clarifications later, we can bring him back.

11 MS. ROBESON: Absolutely.

12 MS. VASSALLO: Thank you. At this time I'd like
13 to have Ms. Bryant return to continue her line of
14 questioning.

15 MS. ROBESON: And you are still qualified.

16 MS. BRYANT: Great.

17 DIRECT EXAMINATION (Resumed)

18 BY MS. VASSALLO:

19 Q All right. Ms. Bryant, you previously noted that
20 you are familiar with the application. I'd like to turn to
21 the master plan. Are you familiar with the approved and
22 adopted Upper Rock Creek master plan which is the one to
23 which this property is subject? Are you familiar with its
24 recommendations with respect to this property?

25 A Yes, I am.

1 Q Okay. And are you familiar with the requirements
2 of the zoning ordinance with respect to domiciliary care
3 home special exceptions?

4 A Yes.

5 Q Okay. Is this use permitted by special exception
6 in this property's zoning category which Mr. La Vay told us
7 is RE-1?

8 A Yes. The property is RE-1, which is, allows for a
9 special exception use of domiciliary care.

10 Q Okay.

11 A Sections 59-C-1.31.

12 Q Now, Madam Hearing Examiner did not go into the
13 specifics of a special exception because the parties here
14 are generally familiar with it, but would you please tell
15 us, what are the inherent impacts of this type of
16 domiciliary care home special exception?

17 A There are generally five inherent impacts, the
18 building structures and the outdoor spaces, lighting,
19 traffic generated by the staff, residents, and its visitors,
20 parking, deliveries and trash pickup, and noise typically
21 from deliveries, trash pickup, and the generator.

22 These impacts are minimal and will not adversely
23 impact the surrounding area, surrounding uses. The building
24 and structures are residential in nature. They are a
25 proposed two-story building that's in keeping with the

1 neighborhood. It is setback in conformance with the RE-1
2 zone setbacks, and in fact it's in excess in most cases.

3 And it will, through the nature of the special
4 exception, the outdoor use spaces will not be adversely
5 impacted. As Dr. Alfred had testified, her residents
6 generally stay inside, and when they do go outside, it won't
7 be for noisy events.

8 The traffic generated is minimal. We have a
9 traffic expert who will testify to that. And the adequate
10 parking is provided. We are in conformance with the
11 requirements of 59-E, in addition to the requirements of the
12 special exception requirements for parking.

13 In addition, the parking is tucked between the two
14 buildings, to help reduce the visual impacts. So the
15 buildings will hide most of the parking from certain
16 directions. And the slope of the hill from the rear, at the
17 southern end of the property will also screen the parking.

18 And deliveries and trash pickups will be limited
19 to daytime hours, as outlined by the Park and Planning
20 staff. And the generator noise will be discussed by the
21 architect.

22 MS. ROBESON: The poor architect.

23 BY MS. VASSALLO:

24 Q Okay. What I would like to do now is get through
25 some of the more, the overall aspects of a domiciliary care

1 home. And I'd like you to review each item and state the
2 conclusion that you've reached in respect to each item.
3 Would you please describe the surrounding properties and the
4 uses and the defined neighborhood?

5 A Okay. Park and Planning defined the surrounding
6 area as Muncaster Mill to the north, Bowie Mill Road to the
7 east, and Rock Creek Park to the south and west. I kind of
8 wanted to clearly define that a little more. It didn't
9 quite make complete sense to me, because we're actually east
10 of Bowie Mill Road.

11 MS. ROBESON: I was going to ask you that.

12 THE WITNESS: So generally, I would say that the
13 area is Muncaster Mill to the north, and as it wraps down
14 and intersects with the ICC on the east hand side is kind of
15 the north and east boundaries. The ICC to the south and
16 southwest of us.

17 MS. ROBESON: Yes.

18 THE WITNESS: And then Rock Creek Park to the
19 south, I mean, northwest of us.

20 MS. ROBESON: Is Exhibit --

21 MS. VASSALLO: Exhibit 32.

22 MS. ROBESON: -- 32, thanks. Is Rock Creek Park
23 the solid band of trees --

24 THE WITNESS: Yes. Rock Creek Park is --

25 MS. ROBESON: -- to the north.

1 BY MS. VASSALLO:

2 Q And Ms. Bryant --

3 A Yes. And it actually wraps down around the south,
4 down into ths area.

5 MS. ROBESON: Okay. I just wanted to clarify for
6 the record that that's where it was on the exhibit.

7 THE WITNESS: Yes.

8 MS. VASSALLO: Okay.

9 MS. ROBESON: So you're saying the ICC to the
10 south and west.

11 THE WITNESS: Right.

12 MS. ROBESON: Okay.

13 THE WITNESS: Yes.

14 MS. ROBESON: Yes, that makes sense.

15 BY MS. VASSALLO:

16 Q Would you please speak to the application's
17 consistency with the general plan and the Upper Rock Creek
18 master plan?

19 A The proposed application or the master plan, I
20 should say, reconfirms the site as an RE-1 zone which we are
21 in conformance with. There are no specific recommendations
22 for this site in the master plan. There's a general overall
23 discussion about housing in the area, and how it should be a
24 diversity of housing types, and it should include affordable
25 and elderly housing.

1 It also recognized that elderly housing is
2 important in the master plan area. And we think this
3 conforms with those general overall goals for the master
4 plan. The other, well, actually I think you're going to get
5 to that.

6 Q Okay.

7 A We'll talk about the bike path later. Next.

8 Q There are several references to pedestrian
9 connections and bikeways in various master plans. Would you
10 speak to those, please?

11 A Okay. The master plan recommends a shared use,
12 actually, a dual use bike path. They have a class one,
13 which is off-site eight-foot shared use. And then there is
14 some recommendation also for an on-road on Needwood, too.
15 There's just a dual path.

16 MS. ROBESON: Wait. Would you say that again? I
17 was trying to piece all the master plans together.

18 THE WITNESS: Yes, right.

19 MS. ROBESON: Can you just define those items?

20 THE WITNESS: The class one, class one bike path
21 is off-road. And it's typically an eight-foot asphalt path
22 that is a shared use, so hikers and bikers could use it.

23 MS. ROBESON: Hikers or -- okay.

24 THE WITNESS: It's a hiker-biker trail.

25 MS. ROBESON: All right.

1 THE WITNESS: And that's what's proposed for,
2 generically in the master plan.

3 MS. ROBESON: For this property along Needwood?

4 THE WITNESS: For this property along Needwood.
5 It goes all the way from Redland Road, which is kind of
6 south and west of us.

7 MS. ROBESON: Okay.

8 THE WITNESS: It's supposed to go from the
9 Needwood intersection to Redland Road. It goes up Needwood,
10 all the way to Muncaster Mill.

11 MS. ROBESON: Okay. All right.

12 THE WITNESS: And then there is a countywide
13 bikeway functional master plan, as well as the Inter-County
14 Connector limited functional master plan amendment. But in
15 the County bikeways functional master plan, on page 58, it
16 identifies Needwood Road as a dual bikeway. Shared use and
17 bike lanes. So there is this recommendation that there be
18 some on road as well as this shared. But this is all things
19 that need to be worked out because --

20 MS. ROBESON: Wait. It recommends an on-road bike
21 path, as well as the dual use --

22 THE WITNESS: Yes.

23 MS. ROBESON: -- shared bike path.

24 THE WITNESS: Bike path.

25 MS. ROBESON: And would the dual use be out of the

1 right-of-way on the subject property?

2 THE WITNESS: No. All this would occur in the
3 right-of-way.

4 MS. ROBESON: In the right-of-way. Okay. Which
5 includes how much of the subject property? How far does the
6 right-of-way go into the subject property?

7 THE WITNESS: The new dedication of our right-of-
8 way?

9 MS. ROBESON: Yes.

10 THE WITNESS: Okay. I'll have to look at the site
11 plan. One second.

12 (Discussion off the record.)

13 THE WITNESS: Exhibit 34. It's not labeled on
14 this.

15 (Discussion off the record.)

16 THE WITNESS: It looks like we're going to need
17 approximately 22 feet. It varies. It does from 22 feet at
18 one end to approximately 24 feet at the other end.

19 MS. ROBESON: Okay.

20 THE WITNESS: The dedication that we're getting is
21 based off the center line of the road, not necessarily where
22 the existing property lines were. So right now the existing
23 Needwood Road is about two feet off of the property line,
24 and then we're going to dedicate the 24 plus.

25 MS. ROBESON: Right.

1 THE WITNESS: So there will be a large swath,
2 actually, of grass and trees in that 24 feet. And that's
3 where the hiker-biker trail would go.

4 MS. ROBESON: The dual use.

5 THE WITNESS: The dual use.

6 MS. ROBESON: And then where is the on-road one?

7 THE WITNESS: The on-road would go onto Needwood
8 Road. But I think there's some questions about whether they
9 would have to expand the asphalt on Needwood Road to allow
10 for that. That's the whole --

11 MS. ROBESON: That's where I was confused. So
12 thanks.

13 THE WITNESS: Right. And that's where the issue
14 is with how do we implement this. And I think there was
15 some question on everybody's part as to how do we. And
16 that's why we'd like to push it off to preliminary plan
17 where we can sit down with all the stakeholders and figure
18 out the best way.

19 MS. ROBESON: It sounded like the plans were a
20 little bit in flux.

21 THE WITNESS: Right.

22 MS. ROBESON: I was also, in that excerpt, I kept
23 looking for that excerpt, the page 58. Is that in the
24 record, or --

25 MS. VASSALLO: It was included as part of the

1 application back in June.

2 MS. ROBESON: It was in the application? Oh, all
3 right.

4 MS. VASSALLO: I can tell you in a moment which
5 application, which exhibit we submitted it as. One moment.

6 MS. ROBESON: Oh, 6(c). I'm sorry. I missed
7 that. I see that this is the master plan of bikeways.

8 MS. VASSALLO: Yes.

9 MS. ROBESON: Okay. Okay. I got that.

10 MS. VASSALLO: This functional master plan.

11 MS. ROBESON: Yes.

12 MS. ROBESON: Okay. So the functional master
13 plan, the County's functional master plan of bikeways calls
14 for an on-road and then the dual use --

15 MS. VASSALLO: Right.

16 MS. ROBESON: -- off the road. The question is,
17 are they going to expand the asphalt to include the on-road.

18 MS. VASSALLO: Right.

19 MS. ROBESON: Okay. I'm sorry. I hate to stop
20 you but I was really confused.

21 MS. VASSALLO: That's fine.

22 MS. ROBESON: And I was trying to figure this out.
23 Okay.

24 THE WITNESS: Okay. So the intent is that the
25 applicant would like to, I guess push the, what it is, where

1 it is, how it's installed, when it's installed off to the
2 preliminary plan process because two concerns, there's not
3 clear definition, clear understanding from the County what
4 they want. It doesn't even say which side of the road it
5 was supposed to be on. So there's issues like that, that
6 they had to work out.

7 In addition to that, we have several large
8 existing trees along that frontage that we would like to
9 keep, if at all possible, at least in the short term,
10 because we think that that helps with the screening and the
11 buffering of the building, although they are not necessary.

12 And this would also -- so the question is, how do
13 we deal with that. And we'd like to push off, I guess, to
14 the preliminary plan that decision. And I had some
15 language, I guess, that we'd like to request that the
16 hearing examiner accommodate the request with the condition
17 that would allow the applicant to address the issue at the
18 time of preliminary plan.

19 And the condition would be written to allow the
20 flexibility and the method that would be utilized to achieve
21 the goal with the intent of eliminating the need for the
22 applicant to spend the additional time and expense to return
23 back here to modify the special exception, once the decision
24 as to who, what, where when and why is answered for the bike
25 path.

1 So I guess what we're asking is, if they decide
2 that they don't want the bike path, or they don't want it
3 right now, but we have to pay into a fund, to pay it, or
4 that, you know, whatever the decision is, that we would like
5 that decision, I guess, to be acceptable to the hearing
6 examiner without having to come back to amend the special
7 exception.

8 MS. VASSALLO: As the hearing examiner will see in
9 the Planning Board chair's letter, this was a suggestion
10 made on her part that she understood the flux of what this
11 bike path will be, where it is to be located, whether it
12 will actually connect to anything.

13 And so she wanted the ultimate acceptance of the
14 site plan by the hearing examiner to reflect the notion that
15 should a bike path be required, it may be installed. But if
16 a bike path is not required, it's not required to be
17 installed.

18 MS. ROBESON: Well, okay. So she wants to make
19 the decision in preliminary plan. She wants to make the
20 decision. And I understand your concern. I do think if the
21 site plan changes from today, you are going to have to amend
22 your special exception plan, because your special exception
23 plan has to show what's on the site.

24 Whether that's considered a minor modification, or
25 you know, there is a minor modification procedure, but I

1 don't think you have to show the eventual outcome today.
2 But I think that you're going to have to show what
3 eventually is going to occur on the site. And that could be
4 a minor modification, given that we've spoken about it, and
5 everybody knows, and that as you know, doesn't require the
6 public hearing. But I think eventually, I don't see a basis
7 under the law to say that you don't have to show it on the
8 special exception plan.

9 MS. VASSALLO: I would say, I guess, two things.
10 We're not showing it currently, because we didn't know where
11 to put it.

12 MS. ROBESON: You can't. Right.

13 MS. VASSALLO: Right. We couldn't show it.

14 MS. ROBESON: And I understand that.

15 MS. VASSALLO: And I guess the other thing is,
16 with the dedication, this will be off of our property at
17 that point. It will be within the right-of-way. I don't
18 know if that makes a difference to you or not.

19 MS. ROBESON: Well, I think that I'm not going to
20 say whether it makes a difference. I'm not going to say you
21 don't have to amend your special exception .

22 MS. VASSALLO: Okay.

23 MS. ROBESON: I'm going to say that when the time
24 comes, sorry, when the time comes and perhaps it will be in
25 the right-of-way, perhaps it will be on the property. I

1 don't know. But I'm not going to say today that you don't
2 have to come back, because I don't know what it's going to
3 be.

4 MS. VASSALLO: Okay.

5 MS. ROBESON: The best I'll say today is, I do
6 understand the flexibility that you want, and it does sound,
7 from your statement of justification, that, you know,
8 there's funding issues and things like that.

9 As long as I'm willing to accept a future
10 condition that as long as Dr. Alfred agrees to comply with
11 whatever the master plan provides, if it does provide on her
12 property, then I'm willing to take that as conformance with
13 the master plan. But I'm not going to make a decision on
14 whether she has to come back or doesn't have to come back.

15 If it's dedicated right-of-way, you know, your
16 argument could be, yes, she doesn't have to come back. But I
17 don't know what it's going to be yet. And there is the
18 minor modification procedure available if she does. All I
19 know is, the statute requires everything on her property to
20 be shown on the special exception plan.

21 MS. VASSALLO: Okay.

22 MS. ROBESON: Does that help?

23 MS. VASSALLO: Well, we remain in a state of flux,
24 both as to the County's mandates and, right, yes. So until
25 we know what the County wants, we can't tell you what it

1 will be.

2 MS. ROBESON: Yes. And what I'm saying to you is,
3 I'm not going to agree right now that, yes, it's -- that you
4 don't have to come back in the future. All I'm saying is,
5 the law -- all I'm saying is, whatever's on the subject
6 property has to be shown on the site plan. And that's
7 pretty clear under the statute. So I can't say I'll waive a
8 hearing and say you never have to come back.

9 MS. VASSALLO: And I think that may be reflected
10 when you look at the chair of the Planning Board's letter.
11 She suggested an additional sentence to one of the
12 recommended conditions.

13 And that additional sentence states, a shared use
14 path on the site along Needwood Road may be added at the
15 time of preliminary plan review. I believe she indicated
16 that may as, is permitted to be added at the time of
17 preliminary plan review. And you'll see that in her letter.

18 MS. ROBESON: And I'll accept that as meeting the
19 master plan. But all I'm saying is, you still may have to
20 come back to site, depending, to make sure that your special
21 exception shows everything that's required to be shown.

22 BY MS. VASSALLO:

23 Q Okay. Returning to our evaluation, would you
24 speak to how the proposed use will be in harmony with the --

25 MS. ROBESON: Wait. Before we get here, can you

1 just describe the flux that, you know, we're all talking
2 about the flux, and I saw your statement. But I just
3 wondered if you could describe the status of, I saw a lot of
4 things about what SHA is willing to fund, and what the
5 County is willing to fund, and what the ICC plan provides.
6 Could you just go into that for the record a little bit.

7 THE WITNESS: Okay. Well, I don't really have all
8 of that in front of me. Okay. So the ICC, the Inter-County
9 Connector limited functional master plan amendment,
10 originally the idea was that the ICC would have bike paths
11 that ran along the ICC. And then they would have fingers
12 that came up from the ICC into the neighborhood. And that
13 was what was going to be covered under the ICC funding.

14 MS. ROBESON: Okay. Can you put that aerial back
15 up. I just -- the minute you said fingers, I was like, wait
16 a minute. Okay, go ahead. Thanks,

17 THE WITNESS: Okay. So the ICC is a big road
18 south of our site. And the intent was that there would be a
19 bike path along the ICC. And at the interchanges, and at
20 areas where it was able to, they would have connections from
21 their surrounding community into the ICC. So the ICC
22 wouldn't just be a vehicular transportation system. It
23 would also include bicycles.

24 MS. ROBESON: Okay.

25 THE WITNESS: And along the way, the State decided

1 that they were only going to put in the portion in the ICC
2 right-of-way and they are not putting the little
3 connections.

4 MS. ROBESON: I didn't understand that from what
5 was in the file. Okay. And what's the County's position,
6 what's the County's status on funding those, the fingers?

7 THE WITNESS: I'm not sure if I know.

8 (Discussion off the record.)

9 THE WITNESS: Yes, I think that's probably the
10 flux is that nobody has really determined who, what they are
11 going to do now, and how, in terms of how they get those
12 connections made.

13 MS. ROBESON: Okay.

14 THE WITNESS: So that's part of othe problem is
15 they are still looking at those issues, since the State is
16 not doing it, how does the County get around, figure out how
17 to pay for it, and who installs them, and the funding for
18 them.

19 MS. ROBESON: Okay. I understand. All right. I
20 was -- okay.

21 MS. VASSALLO: And you'll note from the excerpts
22 in the record, the excerpt for the countywide bikeway
23 functional master plan was completed in 2005, and the
24 excerpt dealing with the ICC limited functional master plan
25 for bikeways and interchanges where they changed their plan

1 to no longer include what Ms. Bryant called the fingers.
2 That was completed in 2009.

3 MS. ROBESON: Okay.

4 MS. VASSALLO: The County made it's pronouncement
5 of what it wanted and expected in '05. The ICC made a
6 pronouncement of what it was actually doing in '09. And the
7 two do not sync up.

8 MS. ROBESON: Okay. That is helpful to me. Thank
9 you.

10 BY MS. VASSALLO:

11 Q Okay. How will this use be in harmony with the
12 neighborhood character, taking into account the surrounding
13 existing uses?

14 A The building proposed on site is residential in
15 character, scale and mass. The architect will talk a little
16 bit more about the actual architectural features that make
17 it more residential than a commercial building. The height
18 of the building is well below the building height
19 requirement of 50 feet. We're at approximately 27.

20 It is setback in conformance to the zoning
21 ordinance requirements, as well as it's setback in character
22 with the adjacent properties. Everybody's buildings tend to
23 be a little further off the road and a little more centered
24 on the property of the homes and facilities that are out
25 there now.

1 It is also, you know, there is a hospice across
2 the street, and Magruder High School down the way, so
3 there's some other institutional uses in the neighborhood.
4 And we've talked a little bit about the fact that the two
5 home sites to the south are significantly higher in
6 elevation from our site, so they'll have a much smaller, the
7 building will have a much smaller impact on them.

8 Q Will this facility have impact on the nearby
9 public facilities?

10 A There will be no school age children associated
11 with this, so there will be no impacts on the school system.
12 The Gaithersburg Fire Department is 1.8 miles away. The
13 Sandy Spring Volunteer Fire Department is 4.9 miles away.
14 So it's serviced well by fire and rescue.

15 Montgomery County Police Department's only station
16 is six miles away. And then the Park and Recreational
17 facilities, there are facilities available at the high
18 school, at the Redland Elementary School, and then of course
19 you have the Rock Creek Park nearby. So there are plenty of
20 recreational facilities.

21 Q As the record reflects, the initial application
22 site plan was altered, based on comments received from the
23 planning technical staff. Would you just briefly explain
24 how those, the planning technical staff's request for
25 changes affected what has been submitted now as the revised

1 site plan?

2 (Discussion off the record.)

3 MS. ROBESON: Put the aerial up.

4 (Discussion off the record.)

5 THE WITNESS: All right. So Exhibit 31.

6 Computations with staff, they were concerned originally with
7 the amount of impervious area that was associated with the
8 project, and the number of existing large trees that were
9 being impacted also.

10 So the building was scooted closer to the existing
11 small group home, away from Muncaster --

12 MS. ROBESON: Is that a technical term?

13 THE WITNESS: Scooted, yes. We shifted it down.
14 That allowed us to save more of the large trees along
15 Muncaster Mill Road. And in addition to that, there used to
16 be a loop road that went in front of the building, around
17 the side, and came into the bank southeast corner of the
18 building, that had a little loading area. We eliminated all
19 of that impervious, thereby reducing the amount of impact it
20 would have.

21 BY MS. VASSALLO:

22 Q Okay. Now, I would just like to discuss some of
23 the general conditions that must be satisfied by the special
24 exception use. So I'm going to ask you questions relative
25 to those conditions.

1 In your opinion, will the proposed special
2 exception have adverse impact or cause a nuisance because of
3 traffic, noise, the type of physical activity, or other
4 elements that might be incompatible with the environment and
5 character of the surrounding neighborhood?

6 A I feel like we've covered most of this previously
7 when we've covered the inherent impacts of the special
8 exception. And the answer is the same, that no, there will
9 be no adverse impacts.

10 Q And does this special exception have any
11 non-inherent impacts?

12 A No, it does not.

13 Q And did the planning technical staff agree that it
14 does not have any non-inherent impacts?

15 A Yes, they did.

16 Q In your opinion will the proposed special
17 exception comply with the standards and requirements of the
18 RE-1 zone as found in the zoning ordinance as they govern
19 domiciliary care home special exception uses, and also the
20 zoning ordinance requirements governing special exception
21 uses in general?

22 A Yes. The special exception is in conformance with
23 the RE zone and requirements of the special exception in the
24 RE-1 zone.

25 Q In your opinion will the proposed special

1 exception be consistent with what we like to call the
2 general plan on wedges and corridors of the physical
3 development of the Maryland/Washington regional district in
4 Montgomery County and Prince George's County, commonly
5 referred to as the general plan, including the approved and
6 adopted Upper Rock Creek master plan?

7 A Yes. It is in conformance with the general plan,
8 the wedges and corridors, and with the 2004 Upper Rock Creek
9 master plan. As stated before, the master plan identifies
10 and reconfirms the RE-1 zone in the area.

11 It also, as mentioned before, highlights, it's not
12 specifically mentioned, the site's not specifically
13 mentioned, but it mentions the need for diversity of housing
14 including affordable and elderly housing. And it also
15 mentions the shared use path which we've discussed.

16 Q And we have previously visited upon the notion of
17 harmony with the character of the neighborhood. But I'd
18 like to revisit that question specifically concerning the
19 population, density, design, scale and bulk of the proposed
20 improvements, the intensity and character of activity,
21 traffic, parking condition, and number of similar uses. So
22 in your opinion, will the proposed special exception be in
23 harmony with the character of the neighborhood?

24 A Yes. The proposed, again, is residential in use,
25 in fact, people reside there. The building height and scale

1 is less than the maximums allowed in the RE-1 zone. And the
2 coverage is also under the maximum allowed in the zone.

3 We have maximized the preservation of existing
4 trees, and again, the parking is kind of tucked in between
5 the buildings, trying to minimize its impact on the
6 adjacent, surrounding community. And as Dr. Alfred had
7 mentioned, the anticipation is that the residents probably
8 won't have too many vehicles, and we'll over-serve them with
9 the parking facility that's there.

10 Q In your opinion, will this proposed special
11 exception have a detriment on the use, peaceful enjoyment,
12 economic value, or development of the surrounding
13 properties, or the general neighborhood at the subject site
14 irrespective of any adverse effects the use might have if
15 established elsewhere in the RE-1 zone?

16 A The special exception will not be detrimental to
17 the use, peaceful enjoyment, economic value, or development
18 of the surrounding community. Again, the buildings are
19 setback far from the road, and are several feet below the
20 adjacent properties to the south. They are screened to the
21 west by a row of existing evergreen trees and the small
22 group home will also help to screen the facility.

23 Along Needwood Road, again, we're trying to
24 preserve as many of the existing trees as possible, and
25 we're providing a bio retention facility that will also have

1 to be intensely planted, and will be approved by DPS in
2 terms of what plant material goes in there.

3 As you come along to the eastern side, along
4 Muncaster Mill Road, again, we have pushed the building
5 back, and we've saved a lot of existing trees there. And
6 then on the southern property, again, the building is pushed
7 down several feet below the properties to the south. We've
8 saved several existing trees, and we've installed a line of
9 evergreen and deciduous trees along the southern property to
10 help buffer there.

11 One of the other things that we looked at was the
12 section 59-E-2.83(d) of the zoning ordinance requires that
13 30 percent of the paving, paved area be shaded in 15 years.
14 And we looked at. We had several different trees -- where
15 is the landscape plan. Do you have that? The landscape
16 plan.

17 There is a landscape plan in the record at 23(b).
18 However, there may be a subsequently revised landscape plan
19 in conformance with today's revised site plan.

20 MS. ROBESON: Okay. So let's mark that as Exhibit
21 35, which will be the revised landscape plan. And that's
22 admitted.

23 (Exhibit No. 35 was
24 marked for identification and
25 admitted into evidence.)

1 MS. VASSALLO: Thank you.

2 THE WITNESS: I wanted to go over, we have a
3 fairly lush continuous foundation planting around the
4 building that's going to provide for structure, texture and
5 color. That will help to ground the building.

6 MS. ROBESON: I saw that on the rendered site
7 plan.

8 THE WITNESS: So as to the parking lot and the
9 shading at 15 years, we had, originally had some Valley
10 Forge, two Valley Forge elms, two Green Mountain sugar
11 maples, and one scarlet oak, yes, three trees at the
12 northern end towards the entrance of the facility, and one
13 tree down here. I'm sorry, one of the sugar maples is
14 involved in that.

15 After looking at it, and being a little concerned
16 that trees are like people. You have tall human beings, you
17 have both ends of the scale, a small child who never reaches
18 the height potential you think. We said that it might make
19 a little more sense, to ensure that we hit that 30 percent,
20 to change those out and put in some October glory red
21 maples, because they do tend to spread a little more than
22 the ones that we'd selected, just to make sure that we get
23 to that 30 percent in 15 years.

24 MS. ROBESON: Okay.

25 THE WITNESS: So we'd like to amend our plan and,

1 I guess, resubmit it showing that change.

2 MS. ROBESON: Okay. Okay.

3 THE WITNESS: Whichever you'd like to use.

4 MS. ROBESON: I'm just thinking whether a notice
5 of amendment is required, but --

6 MS. VASSALLO: In my past experience with special
7 exception, at times the hearing examiner leaves the record
8 open for a short period of time for the submission of the
9 plans that --

10 MS. ROBESON: That's what I was thinking.

11 MS. VASSALLO: -- reflect all the details
12 discussed at the hearing.

13 MS. ROBESON: Okay. That's fine. I can do a
14 notice of motion to amend and just for the revised site plan
15 and revised landscape plan. And if there's any revisions to
16 the generator area, you know, and then we can do that.

17 MS. VASSALLO: Okay.

18 MS. ROBESON: But I am going to limit the record
19 being opened if anyone, it's for somebody, if somebody wants
20 to respond, it's only for comments on those particular
21 revisions, and not opening everything wide open.

22 MS. VASSALLO: And that's fine with us.

23 MS. ROBESON: Okay.

24 THE WITNESS: I guess on the generator and the
25 landscaping, the landscaping does not diminish the sound.

1 It diminishes the perception of sound, which is not what
2 we're trying to have a finding of. So the methods that we
3 have to use to diminish the sound will not be the
4 landscaping.

5 MS. ROBESON: Okay.

6 BY MS. VASSALLO:

7 Q Okay. You've just spoken briefly about sound, so
8 please continue along that vein. In your opinion, will the
9 proposed special exception cause any objectionable noise,
10 vibrations fumes, dust, illumination, glare or physical
11 activity?

12 A Given the residential nature and the institutional
13 use, there will be no objectionable impacts. The residents
14 are limited in their mobility, and so their outdoor
15 activities will not create any real impact.

16 There are no real vibrations, fumes, odors or dust
17 associated with the use. And again, the noise impacts of
18 the generator will be minimized through baffles, setbacks,
19 and screening, but not landscape screening.

20 The deliveries of the deliveries and trash pickup
21 will be limited to day hours, typical work hours. They
22 should have no real impact. And the architect will talk
23 about the lighting plan, but it is in conformance with
24 Montgomery County, so there won't be any glare.

25 Q Okay. In your opinion, will the special exception

1 in and of itself, or in conjunction with existing and
2 approved special exception uses in the neighborhood have any
3 sufficiently adverse effect or change the present character
4 or the future development of the surrounding residential
5 community?

6 A No, it will not affect, or adversely affect or
7 change the character or future development of the
8 surrounding community. The surrounding special exceptions,
9 there is the Casey House, which is across Muncaster Mill
10 from us, and that's S-2045. And as we talked about earlier,
11 I think it's a complimentary use to what we are doing. It's
12 actually, in some ways, fortunate that it is so close to us.

13 There is a special exception S-2532, which is a
14 two-stall barn and storage area on Muncaster Road. And then
15 there is special exception S-2596, which is a Washington Gas
16 station, natural gas station, which won't have any effect on
17 this or compound an effect with any of those.

18 Q In your opinion will this proposed special
19 exception adversely affect the health, safety, security,
20 morals, or general welfare of the residents, visitors,
21 guests, or the workers in this area?

22 A No. If the residents are going to be elderly,
23 they won't have, will not adversely affect any of the stated
24 concerns.

25 Q Okay.

1 A Although I don't know about morals.

2 MS. ROBESON: I think that's for bars.

3 THE WITNESS: Bars? That's what I thought.

4 MS. ROBESON: Yes, gambling casinos. But anyway,
5 go ahead.

6 BY MS. VASSALLO:

7 Q In your opinion, will the proposed special
8 exception be served by adequate public services, and we have
9 touched on this, but I just wanted to read this as a
10 question, including fire and police protection, water,
11 sanitary sewer, storm drain, and other public improvements?

12 A Yes, there are adequate public facilities. As you
13 mentioned, there's adequate public and fire, police, the
14 proper categories for the water and sewer, and the
15 infrastructure to build those water and sewer are in
16 Muncaster Mill Road. And we are going to be dedicating,
17 through the preliminary plan process, the master plan right-
18 of-ways.

19 MS. ROBESON: And if required, she will,
20 Dr. Alfred will put the bike path on-site?

21 THE WITNESS: Yes.

22 MS. ROBESON: Okay.

23 THE WITNESS: Yes.

24 BY MS. VASSALLO:

25 Q And in sum, in your expert opinion as a land

1 planner, is this proposed special exception for domiciliary
2 care home suitable for this site and compatible with the
3 surrounding neighborhood?

4 A Yes, it is, for all the reasons that we just
5 mentioned.

6 MS. VASSALLO: Okay. Thank you. That completes
7 the questions that I have for Ms. Bryant. Of course, if you
8 have additional, please go ahead.

9 MS. ROBESON: No, I don't. Thank you.

10 MS. VASSALLO: The next individual who I'd like to
11 have testify is William Stablein, and he'll speak to matters
12 of architecture.

13 MS. ROBESON: Okay. And is his resume --

14 MS. VASSALLO: It is not yet.

15 MS. ROBESON: Okay.

16 MS. VASSALLO: Now, Mr. Stablein has an extensive
17 history. He has testified before this body, but it's been
18 quite some time. So I leave it to your --

19 MS. ROBESON: Well, let me --

20 MS. VASSALLO: -- your discretion as to whether
21 you would like me to go through a line of questioning to
22 establish his credentials. Mr. Freishtat is going to hand
23 you his resume.

24 MS. ROBESON: Thank you. And that will be Exhibit
25 36. Thank you. And Mr., is it Stablein?

1 (Exhibit No. 36 was
2 marked for identification.)

3 MR. STABLEIN: Stablein.

4 MS. ROBESON: You're being qualified as an expert
5 in architecture?

6 MR. STABLEIN: Yes.

7 MS. ROBESON: And are you licensed in Maryland?

8 MR. STABLEIN: I am.

9 MS. ROBESON: And can you just describe the
10 jurisdictions in which you -- have you ever qualified as an
11 expert before the Circuit Court or any administrative
12 agencies?

13 MR. STABLEIN: I have. I've actually qualified as
14 an expert in this forum, although it's been probably eight
15 or 10 years since I did that. I used to do an awful lot of
16 the daycare centers which required special exceptions.

17 MS. ROBESON: Okay.

18 MR. STABLEIN: I routinely do an awful lot of
19 construction design related to claim and dispute work in the
20 various court systems.

21 MS. ROBESON: Okay.

22 MR. STABLEIN: D.C., Maryland and Virginia.

23 MS. ROBESON: All right. I will accept you as an
24 expert in architecture. Your resume is quite lengthy.

25 MR. STABLEIN: I'm sorry.

1 MS. ROBESON: Oh no, that's a good thing. Go
2 ahead, Ms. Vassallo.

3 MS. VASSALLO: Thank you.

4 DIRECT EXAMINATION

5 BY MS. VASSALLO:

6 Q Mr. Stablein, would you please state your name,
7 your occupation, and your work address?

8 A My name is William Stablein. I go by the name of
9 Bill. My occupation is an architect. I work at 7230 Lee
10 DeForest Drive, Suite 201, in Columbia, Maryland.

11 Q Thank you. And I just want to go through, are you
12 generally familiar with the Alfred House Eldercare
13 domiciliary care home facility which is S-2815?

14 A I am.

15 Q Okay. Would you please briefly explain how you
16 went about familiarizing yourself with this application?

17 A I reviewed the site plans that we've looked at
18 here today, and I've reviewed the schematic design plans
19 that I think are also in the record, as well as the site
20 lighting plan and the photometrics associated with it.

21 Q And I'm just checking the record so I can
22 reference the elevations submitted, and give their correct
23 exhibit number. Yes. Exhibit, on the exhibit list, item
24 numbers 4(f), (g), (h) and (i) are the submitted elevations.

25 MS. ROBESON: Okay. And they are not changing,

1 based on the revised --

2 MS. VASSALLO: They have not. No, no new
3 revisions have been submitted for those.

4 MS. ROBESON: Okay.

5 BY MS. VASSALLO:

6 Q Okay. Mr. Stablein, would you please describe in
7 general terms the elements shown in the submitted
8 elevations?

9 A Schematic designs call for exterior, varying
10 exterior materials, all in keeping with the residential
11 quality of the neighborhood. There is a water table masonry
12 component to the exterior elevation, water table. Although
13 we haven't selected a brick or a stone yet, it will be
14 masonry. It will terminate the underside of the window
15 sills on the first floor.

16 Above that there will either be a board-on-board
17 type siding, or a stucco type material for the exterior
18 walls. A sloping asphalt shingle roof. There is a thought
19 that we would add some standing seam in some areas of
20 accent, maybe around the entryway.

21 As we said before it's a two-story building.
22 There are some dormer appendages on the roof, just to
23 visually break the scale of the roof of the facility.

24 Q In your opinion, is the building designed to be
25 compatible with the residential area?

1 A I think that was the intent from the very
2 beginning, that it be compatible, and I think that the
3 design achieves that.

4 Q And will the proposed structure, in your opinion,
5 relate well to the surrounding area in terms of its siting,
6 its scale, the building's bulk, height, the materials, and
7 the textures?

8 A I believe it will.

9 Q In your opinion is the massing and the scale of
10 the proposed building appropriate for the surrounding area?

11 A I think it is. As I said before, there are
12 offsets in the building. There are elements, such as the
13 false dormers at the roof line, which are all intended to do
14 that. Again, I think they successfully achieve that goal.

15 Q Okay. And you indicated that you've reviewed the
16 lighting plan which is in the record?

17 A I have.

18 Q Okay. What, would you explain the sort of
19 lighting fixtures that are proposed?

20 A The lighting that's proposed is predominantly
21 building-mounted lighting. There is one pole mounted
22 fixture to provide proper illumination out adjacent to the
23 parking area. All of these fixtures are cut-off type
24 fixtures to minimize the dispersion and glare as you move
25 away from the fixture.

1 Q And are these fixtures appropriate to ensure that
2 light doesn't intrude into adjacent residential properties?

3 A They are, and that's supported by the photometric
4 analysis done as well.

5 Q And what does that photometric indicate in respect
6 to the foot candle measurement at the property line?

7 A I shows virtually no discernible light dispersion
8 at the property line, certainly well below the .1 foot
9 candle limitation in the ordinance.

10 Q Okay. And we spoke earlier about the fact that
11 there would be a generator on site. What can you tell us
12 about the generator?

13 A Well, I can tell you that it hasn't been sized as
14 of this point. All right. We do know that it will be
15 required to pickup the life safety systems in the building.
16 I am sure that as the design evolves, we will be picking up
17 things like the refrigerators and freezers for obvious
18 reasons, and then some other things.

19 It is safe to say that the generator proposed on
20 this is a small generator. It is not a big building, and
21 it's not going to support huge elements that you think of
22 when you've got massive generator sets. Okay.

23 That being said, it is, from my experience, the, a
24 generator enclosure, which comes with the generator. It's
25 not a build enclosure. All right. It is an accessory. All

1 right. The selection of a generator of a size with an
2 enclosure and with a critical load silencer on the exhaust,
3 all right, will in and of itself meet the 65 decibel limit,
4 which is a requirement of the ordinance.

5 MS. ROBESON: Okay.

6 THE WITNESS: Okay.

7 MS. ROBESON: Good answer.

8 THE WITNESS: I was jumping out of my skin when we
9 were trying to move around.

10 MS. ROBESON: I'm sorry. I'm just trying to
11 figure this out.

12 THE WITNESS: But we kept talking about enclosure.
13 There are enclosures or jackets that you buy with the
14 generator. Okay.

15 MS. ROBESON: Okay. Is it a permanently affixed
16 to the -- is the enclosure, can you just describe what it
17 is?

18 THE WITNESS: It is removable so that you can
19 service the generator.

20 MS. ROBESON: Okay.

21 THE WITNESS: But it does stay equipped. It is
22 affixed to the generator.

23 MS. ROBESON: Okay. So it is enclosed. And what
24 was the other thing? An enclosure. And what was the other
25 thing you mentioned?

1 THE WITNESS: It's called a critical load
2 silencer. It's a type of exhaust muffler, in layman's
3 terms. All right. That intentionally knocks down the sound
4 coming off the exhaust of the generator.

5 MS. ROBESON: Okay. And that's what generates the
6 sound?

7 THE WITNESS: The majority of it, yes.

8 MS. ROBESON: The majority of the sound.

9 THE WITNESS: Yes.

10 MS. ROBESON: And was there anything else you
11 said? It was those two things in combination?

12 THE WITNESS: And the relatively small size that
13 this is going to be.

14 MS. ROBESON: Okay.

15 THE WITNESS: All right.

16 MS. ROBESON: So if I --

17 THE WITNESS: We are very sensitive to the
18 neighbors, and we are also sensitive to the residents of
19 this building. Okay.

20 MS. ROBESON: Okay.

21 THE WITNESS: Relative to the sound that would be
22 emitted by the generator.

23 MS. ROBESON: Okay. So if I placed a condition of
24 approval that said, you'll buy a generator that has an
25 enclosure and a critical load silencer?

1 THE WITNESS: As required to meet it, we are happy
2 to do that.

3 MS. ROBESON: Okay. Okay. And am I using the
4 right terminology if I say enclosure?

5 THE WITNESS: You are. There are other
6 appurtenances. I mean, we need to get through the design
7 process to actually find out how we select these things.
8 Certainly noise emitted from a generator is not something
9 foreign to the generator manufacturers.

10 MS. ROBESON: Okay.

11 THE WITNESS: Okay. So that as we go through the
12 process, we size this generator, we're going to select
13 manufacturers, all right, and the appurtenances that they
14 provide to get this generator to meet --

15 MS. ROBESON: Okay.

16 THE WITNESS: -- the requirements. And I don't
17 see that as being a huge stumbling block from a design
18 perspective.

19 MS. ROBESON: Okay. But if I require, in your
20 opinion, if it has an enclose and a critical load silencer,
21 given the anticipated size, that will meet, in your
22 professional --

23 THE WITNESS: It will, and the --

24 MS. ROBESON: -- in your professional opinion,
25 that will meet the --

1 THE WITNESS: It will.

2 MS. ROBESON: Okay.

3 THE WITNESS: Including the selection of the
4 equipment from the various manufacturers. We may exclude
5 certain manufacturers who can't meet that.

6 MS. ROBESON: Okay.

7 THE WITNESS: You know what I'm saying.

8 MS. ROBESON: Okay. That's fine. And you don't
9 have a problem saying the generator will have an enclosure
10 and a critical load silencer?

11 THE WITNESS: Absolutely.

12 MS. ROBESON: Okay. That's great. Thank you.
13 That was easy.

14 THE WITNESS: I was --

15 MS. VASSALLO: The right person for the job.

16 THE WITNESS: I was going to say, I thought we
17 were moving in the wrong direction before. So I knew where
18 you were.

19 MS. ROBESON: No, I appreciate it. And forgive
20 me, because I didn't know who to have it addressed. So
21 thank you.

22 BY MS. VASSALLO:

23 Q Certainly. Okay. Just returning to a few items.
24 Have you examined the sketch of the proposed sign?
25 Dr. Alfred referenced earlier that she intends to have a

1 sign located --

2 A I have.

3 Q -- approximately at the corner. Okay. And is the
4 proposed sign appropriate for this type of use, bearing in
5 mind that Dr. Alfred has already acknowledged should her
6 special exception be approved, the sign she seeks will
7 require a sign variance?

8 A I understand that it's larger than that normally
9 permitted, and that we'll have to file for a sign variance.
10 The sign itself is relatively understated. It is not a huge
11 sign. It will be constructed out of the materials that we
12 discussed previously for the building.

13 So the intent is to tie it to the architecture of
14 the building and the site in general. I think it will be
15 appropriate for the site. And like I said, I don't look at
16 it as being, you know, a large sign by signage standards. I
17 think it's pretty similar to other signs.

18 MS. ROBESON: Now, what we typically do is put a
19 condition on the approval that you obtain, that the
20 applicant obtain a variance.

21 THE WITNESS: We understand that.

22 MS. ROBESON: Okay.

23 MS. VASSALLO: And we also understand that for
24 some reason should that variance be denied, that
25 Dr. Alfred's sign will have to comply with the County zoning

1 ordinance sign ordinance for a residential area.

2 MS. ROBESON: Okay. That's fine. Thanks.

3 MS. VASSALLO: I don't have any additional
4 questions for Mr. Stablein. If the hearing examiner does?

5 MS. ROBESON: No, he answered all my questions.
6 Thank you.

7 MS. VASSALLO: The next individual whom I would
8 like to ask to testify is Mr. Carl Starkey, on matters of
9 traffic and transportation. And we have --

10 MR. FREISHTAT: Do you want the aerial or the site
11 plan.

12 MR. STARKEY: The site plan is fine.

13 MS. VASSALLO: Mr. Starkey's resume is not
14 currently in the record. It is my understanding that
15 Mr. Starkey has testified before this body, and possibly
16 before --

17 MS. ROBESON: Oh, I totally reject him as an
18 expert. No, he is, I have high, I will make no argument
19 that he is not an expert. But I will admit the 37. I will
20 take is resume and knowing that he has qualified as an
21 expert in several, numerous jurisdictions, including this
22 one. Okay. Continue.

23 (Exhibit No. 37 was
24 marked for identification and
25 admitted into evidence.)

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DIRECT EXAMINATION

BY MS. VASSALLO:

Q Mr. Starkey, would you please state your name,
your occupation, and your work address?

A Hi, my name is Carl Starkey. I am a
transportation consultant with the firm of Street Traffic
Studies, offices at 400 Crain Highway, Northwest, in Glen
Burnie, Maryland 21061.

Q Thank you. And are you familiar with the Alfred
House Eldercare domiciliary care home application S-2815?

A Yes, I am.

Q And are you familiar with the special exception
property and its surrounding area?

A Yes. I reviewed the site plan, and aerial
photographs at the property.

Q Okay. Would you please briefly explain the
analysis you performed for this application?

A Yes. In reviewing the plan, I prepared a traffic
brief. The site is proposed to generate less than 30 peak
hour trips, so a full, comprehensive traffic study was not
required.

I looked at several categories of use for
domiciliary care, those being congregate care, assisted
living, continuing cognitive care, and assisted living
facilities. Three of those four categories came from the

1 Institute of Transportation Engineers trip generation
2 manual, and the four from Park and Planning's trip
3 generation guidelines, table A-7.

4 And of those the maximum number of trips that
5 could be generated during the peak hours was 11. Again,
6 that's below the 30 trip level category four full study. So
7 in doing that, it met the local area transportation
8 requirements.

9 Q Okay. And I note for the record that
10 Mr. Starkey's traffic study is Exhibit 10. Let's see. Is
11 the number of trips you found, or does it comport with the
12 County's local area transportation review requirements
13 commonly referred to as LATR?

14 A Yes. Again, that the threshold would be 30 trips
15 for a full study, and again, the maximum that could be
16 generated under any of the four categories I reviewed was
17 11. And so it would meet the guidelines.

18 Q And is this site subject to the County's policy
19 area mobility review commonly referred to as PAMR?

20 A It is not required to meet PAMR. It is located in
21 the rural east policy area. And they are not, that policy
22 area is not subject to PAMR mitigation, so it meets PAMR.
23 And that is not, it is not subject to those requirements.

24 Q And I note that your traffic brief examined bed
25 counts, though stating that there would be seven staff

1 members, when in fact we submitted the application
2 indicating that overall on the property, taking into account
3 the existing group home and the domiciliary care home, there
4 would be 12 staff members. Does this make any difference in
5 the trip generation count?

6 A In this case, no, because I based my trip
7 generation number based on the number of beds that were
8 proposed. So the number of beds was, the total would be
9 five existing plus 34 proposed, and so 39 total. And so the
10 staffing level did not come into play in that calculation.
11 So my trip totals would remain the same, based on the 39
12 beds.

13 MS. ROBESON: Okay.

14 BY MS. VASSALLO:

15 Q I'd just like to touch briefly on the proposed
16 parking. Does the proposal meet the zoning ordinance's
17 parking requirements?

18 A Yes. There are 17 spaces proposed. The parking
19 requirement is 16, so we exceed that. And that we are
20 proposing 17 spaces.

21 Q Have you evaluated the circulation on the site?

22 A Yes. The circulation is safe and adequate. As
23 Ms. La Vay, excuse me if I said your name improperly, but
24 talked about, we have 17 spaces, but we also have three
25 areas that are designated that are cross-hatched out, to

1 assist people in circulating through the parking area so
2 that while we, and you have one way in and out, you have
3 those additional areas that will allow for proper
4 circulation. If at any one time all spaces were occupied,
5 you still have those spaces to allow you to turn around.

6 MS. ROBESON: Okay. And the same for truck
7 deliveries. There's --

8 THE WITNESS: Yes. The truck delivery is actually
9 separated from the parking proper.

10 MS. ROBESON: Oh, it's that T kind of.

11 THE WITNESS: Correct. That little T at the --

12 MS. ROBESON: Okay. I understand.

13 THE WITNESS: Okay. All right.

14 BY MS. VASSALLO:

15 Q Okay. In your opinion, will the proposed special
16 exception have any adverse impacts or cause a nuisance
17 because of traffic, which would make this use incompatible
18 with the environment and character of the surrounding
19 neighborhood?

20 A No. Again, there will be very little trips
21 generated by this use. As spoken earlier by Dr. Alfred, the
22 majority of residents don't own, there is not any
23 anticipating there will be car ownership. There will be
24 very little visitation. And while I was not required to
25 conduct traffic counts for this use, I did review the

1 Maryland State Highway Administration trip generation --
2 excuse me, traffic volume data. And I obtained a count
3 conducted in April of 2011 which documents that the nearby
4 intersection of Maryland 115, Muncaster Mill Road and
5 Needwood Road currently operates at levels of service D
6 during both the morning and evening peak hours. And I can
7 submit this into the record if you would like.

8 MS. ROBESON: Okay. That would be Exhibit 38. And
9 can you describe it again for me so I can --

10 (Exhibit No. 38 was
11 marked for identification.)

12 THE WITNESS: It is a turning movement count at
13 the intersection of Muncaster Mill Road and Needwood Road,
14 conducted in April 2011.

15 MS. ROBESON: So SHA --

16 THE WITNESS: It's just excerpted.

17 MS. ROBESON: So SHA turning movement count 2011.

18 THE WITNESS: Correct.

19 MS. ROBESON: SHA 2011 turning movement count.

20 Okay. It's 38.

21 THE WITNESS: 38.

22 MS. ROBESON: Thank you.

23 MS. VASSALLO: Okay.

24 MS. ROBESON: And this is only generating 11
25 trips?

1 THE WITNESS: The site is only generating 11 trips
2 total in the peak hour maximum.

3 MS. ROBESON: Okay.

4 THE WITNESS: So again, if we were to add all 11
5 trips to that turning movement count, the intersection would
6 continue to operate at a level of service D.

7 MS. ROBESON: Okay.

8 BY MS. VASSALLO:

9 Q In your opinion, will the proposed special
10 exception be in harmony with the general character of the
11 surrounding neighborhood, including traffic, parking
12 conditions, and number of similar uses?

13 A Yes.

14 Q And is the proposed special exception to be served
15 by adequate roadways?

16 A Yes, again, as is documented by Exhibit 38, the
17 nearby intersection is operating at an acceptable level of
18 service.

19 MS. ROBESON: Okay. Thank you.

20 MS. VASSALLO: I don't have any additional
21 questions for Mr. Starkey. If Madam Hearing Examiner does,
22 please go ahead.

23 MS. ROBESON: For once, I don't.

24 THE WITNESS: Thank you so much.

25 MS. ROBESON: No, thank you. You can be excused.

1 MS. VASSALLO: Madam Hearing Examiner, that
2 completes the expert testimony of all of our witnesses, as
3 well as the fact testimony of the applicant. I don't have
4 any additional evidence or argument to present, other than
5 if you request, and minor housekeeping items.

6 MS. ROBESON: Okay. Go ahead.

7 MS. VASSALLO: Okay. One, I would just ask that
8 the hearing examiner take into consideration, should this
9 special exception be granted, that we will need a
10 substantial time for implementation of the special
11 exception.

12 This application is still subject to preliminary
13 plan and site plan approval by the Planning Board, as well
14 as the typical design and engineering drawings. So we know
15 that the ordinance has a time limitation for implementation
16 of the special exception. And we would ask that to be
17 extended in light of the additional administrative processes
18 through which this application must go.

19 MS. ROBESON: And do you have a time frame for
20 extension, or --

21 MS. VASSALLO: May I consult with the applicant?

22 MS. ROBESON: Okay.

23 (Discussion off the record.)

24 MS. VASSALLO: We would like to request two years
25 for implementation of the special exception. I believe

1 typically it's on year.

2 MS. ROBESON: I'm writing. Okay. Go ahead. And
3 that is because of the development reviews. Is it also
4 because of the, I notice that the Planning Board said the
5 bike path issue has to be resolved by preliminary plan.

6 MS. VASSALLO: Yes. This property is an
7 unsubdivided lot.

8 MS. ROBESON: Okay.

9 MS. VASSALLO: Montgomery County has a requirement
10 that no construction may take place unless a property is
11 platted. This property and the existing home are so old,
12 they predate that requirement.

13 MS. ROBESON: Okay.

14 MS. VASSALLO: Therefore, we need to go through
15 the preliminary plan, obtain a record plat so that we, that
16 record plat will be in place when we seek to obtain building
17 permits and those sorts of things.

18 MS. ROBESON: And resolve the bike issue at the
19 same time.

20 MS. VASSALLO: Exactly. So it's not a quick
21 administrative process --

22 MS. ROBESON: Okay.

23 MS. VASSALLO: -- that this needs to go through.

24 MS. ROBESON: All right. Anything else?

25 MS. VASSALLO: The next item is, I just want to

1 make sure that there was clarity. Intermittently throughout
2 the technical staff report there were references to 39 beds
3 on the site, 34 beds, five existing beds.

4 The existing group home is a by right use. In the
5 zoning ordinance a small group home may have up to eight
6 residences. In fact, this group home has seven bedrooms.
7 So it is conceivable that there could be eight residents.
8 It's a by right use.

9 The special exception is sought for 34 beds. So
10 the special exception itself seeks 34 beds. The hearing
11 examiner did have an exchange with staff member in the
12 Department of Permitting Services indicating that it's not a
13 typical that there would be multiple uses on a single
14 property.

15 MS. ROBESON: Right.

16 MS. VASSALLO: But I just wanted to make sure that
17 it's clear, because the technical staff report interchanges
18 the number.

19 MS. ROBESON: I see what you are saying.

20 MS. VASSALLO: I wanted to be clear that the
21 application is for special exception approval for 34 beds.

22 MS. ROBESON: Okay. All right. I guess my only
23 question on that is, if you put eight people there, would
24 the parking requirements --

25 MS. VASSALLO: The parking doesn't change. For a

1 special exception it's one parking space per four beds.

2 MS. ROBESON: Oh, per bed.

3 MS. VASSALLO: We currently have five persons, so
4 that's two parking spaces.

5 MS. ROBESON: I guess what my question is, the
6 combination of uses on the site, if you put eight people in
7 the residential home --

8 MS. VASSALLO: The staffing would not change, and
9 the parking.

10 MS. ROBESON: That's based on staffing? The
11 parking is based on staffing?

12 MS. VASSALLO: Parking is based both on beds and
13 on staffing. We meet it now. We would meet it afterwards,
14 too.

15 MS. ROBESON: Even with the eight?

16 MS. VASSALLO: Even with the eight.

17 MS. ROBESON: Okay.

18 MS. VASSALLO: So, but just for notions of
19 separate uses, I wanted to make sure that that was clear.

20 MS. ROBESON: I understand. What you're saying
21 is, she could go up to eight.

22 MS. VASSALLO: Conceivably.

23 MS. ROBESON: Conceivably.

24 MS. VASSALLO: Under by right use in the zoning
25 ordinance.

1 MS. ROBESON: Right.

2 MS. VASSALLO: And still meet all the requirements
3 without impacting the approval, the sought after approval
4 for the special exception.

5 MS. ROBESON: Okay.

6 MS. VASSALLO: Okay. Then that was pretty much
7 the extent of my housekeeping items.

8 MS. ROBESON: Okay. Although, if you had to
9 change the parking, that would have to, you would have to do
10 some kind of minor modification of --

11 MS. VASSALLO: That's right.

12 MS. ROBESON: Yes. Okay. I'm fine. I understand
13 that. So what I'm going to do, I did not bring my calendar
14 in with me. We're required to give at least 10 days' notice
15 of the notice of motion to amend, of a motion to amend. And
16 then we're also required, if there's new exhibits, to give
17 15 days for review of that.

18 So I'm going to keep the record open 15 days from
19 today's date solely in order to do the notice of motion to
20 amend and to permit any comments only on the revisions to
21 the site plan. And unfortunately, I do not have my calendar
22 with me. So I can't calculate the 15 days from today.

23 If 15 days is a holiday, because I know that
24 President's day is coming up, but I think that's more than
25 15 days away. But in any event, in 15 days from today's

1 date, the 27th, is a weekend or a holiday, the record will
2 close on the following business day.

3 I have 30 days to write a --

4 (Discussion off the record.)

5 MS. ROBESON: Okay. So February 13th, February
6 13th, the record will close, close of business, February
7 13th. I then have 30 days to write a recommendation and
8 report to the Board of Appeals. It will be posted on our
9 website, and we do notify you when it's posted.

10 And as you, I'm sure you're already aware, you
11 have 10 days if you disagree with my recommendation, you
12 have 10 days to request oral argument before the Board of
13 Appeals who's going to make the final decision in the case.

14 And with that, I am going to adjourn the hearing.
15 I'm sorry.

16 MS. VASSALLO: One question. The record has to
17 stay open for submission of the revised site plan, and also
18 the revised landscape plan, because obviously the landscape
19 plan reflects the revised site plan.

20 MS. ROBESON: Correct.

21 MS. VASSALLO: Okay. I wanted it clear.

22 MS. ROBESON: Well --

23 MS. VASSALLO: The new measurements have to --

24 MS. ROBESON: Are these in here today? These are
25 what?

1 MS. VASSALLO: The landscape plan is not. As you
2 recall, we noted some tree species changes.

3 MS. ROBESON: That's right. Is there any way, I
4 have to give 10 and 15 notice, days' notice from the date
5 they come in. So I guess my question is, I thought the
6 landscape plan that you had here was already had the
7 changes. How quickly do you think you could get those
8 changes in?

9 MS. VASSALLO: We can get it to you today.

10 MS. ROBESON: Today? That would be great. So
11 we'll keep the record open until February 13th, provided
12 that you get the revised plan in to me today. Okay.

13 MS. VASSALLO: Now, will you need paper and
14 electronic?

15 MS. ROBESON: Right now -- well, can you provide
16 both to me today? Okay. Never mind. That would be the
17 easiest way, because we do require the electronic anyway.
18 All right. So February 13th. And the record is open solely
19 to receive that revised landscape plan, the transcript, and
20 any additional comments solely on the changes to the
21 application. All right. Thank you very much. I appreciate
22 your organization and answering my questions. Thank you.

23 MS. VASSALLO: Thank you.

24 (Whereupon, at 11:33 a.m., the hearing was
25 concluded.)

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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that
the attached pages represent an accurate transcript of the
electronic sound recording of the proceedings before the
Office of Zoning and Administrative Hearings for Montgomery
County in the matter of:

Petition of Dr. Veena J. Alfred and Alfred House Eldercare
Special Exception No. S-2815
OZAH No. 12-03

By:

Teresa S. Hinds, Transcriber